No. 93-1140

FILED
FEB 23 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

JAMES B. BEAM DISTILLING CO.,

Petitioner,

v.

STATE OF GEORGIA; JOE FRANK HARRIS, individually; ZELL MILLER, individually and as Governor of the State of Georgia; MARCUS E. COLLINS, individually and as Georgia State Revenue Commissioner; and CLAUDE L. VICKERS, individually and as Director of the Fiscal Division of the Department of Administrative Services,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Counsel of Record:

MORTON SIEGEL
SIEGEL, MOSES, SCHOENSTADT & WEBSTER, P.C.
One Illinois Center
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601-4798
Telephone: 312/540-4300

JOHN L. TAYLOR, JR.
CELESTE MCCOLLOUGH
MATTHEW L. HESS
JEFFERY T. COLEMAN
VINCENT, CHOREY, TAYLOR & FEIL
A PROFESSIONAL CORPORATION
The Lenox Building, Suite 1700
3399 Peachtree Road, N.E.
Atlanta, Georgia 30326
Telephone: 404/841-3200

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

I. The Respondents' Supposed *Chevron*/Reliance Defenses Conflict With The Applicable Decisions Of This Court 1

II. The State Court's Standing Defense Does Not Provide An Adequate And Independent State Ground; Petitioner's Purported Lack of Standing Under The Refund Statute Does Not Convert The Refund Statute to A Clear and Certain Remedy So As to Satisfy Due Process..... 3

III. Respondents Have Mischaracterized The System For Collection Of Alcohol Taxes In Order To Avoid The Due Process Implications Of The Duress That Forced the Petitioner To Pay The Tax And Challenge Its Constitutionality Later 6

IV. The Respondent Had No Clear And Certain Prospective Remedy Under Georgia Law 7

CONCLUSION 10

TABLE OF AUTHORITIES

Page

I. STATUTES

O.C.G.A. § 3-2-13 7

O.C.G.A. § 3-2-14 7

O.C.G.A. § 3-2-35 7

O.C.G.A. § 3-4-61 7

O.C.G.A. § 48-2-35 ..... 2, 4

O.C.G.A. § 50-13-10 7

II. REGULATIONS OF THE STATE OF GEORGIA

Georgia Revenue Rule § 560-2-2-.09 7

Georgia Revenue Rule § 560-2-2-.28 7

Georgia Revenue Rule § 560-2-2-.29 7

Georgia Revenue Rule § 560-2-3.-01 6

Georgia Revenue Rule § 560-2-3-.03 6

Georgia Revenue Rule § 560-2-3-.09 7

Georgia Revenue Rule § 560-2-3-.10 7

Georgia Revenue Rule § 560-2-3-.22 7

Georgia Revenue Rule § 560-2-3-.30 7

III. DECISIONS OF THE UNITED STATES SUPREME COURT

American Trucking Association, Inc. v. Smith, 496 U.S. 167, 110 S. Ct. 2323 (1990) 2

Bacchus Imports v. Dias, 468 U.S. 263, 104 S. Ct. 3049 (1984) 2, 3

TABLE OF AUTHORITIES – Continued

Page

Chevron Oil Co. v. Huson, 404 U.S. 97 (1971) 1, 2

Harper v. Virginia Department of Taxation, 509 U.S. ___, 113 S. Ct. 2510 (1993) 4

Hostetter v. Idlewild Bon Voyage Liquor Corp., 377 U.S. 324 (1964) 3

James B. Beam Distilling Co. v. Georgia, 501 U.S. ___, 111 S. Ct. 2439 (1991) 1, 5

McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Dept. of Business Regulation of Florida, 496 U.S. 18, 110 S. Ct. 2238 (1990) 1, 2, 3

Reich v. Collins, 509 U.S. ___, 111 S. Ct. 2439 (1991) 5, 6, 9

United States v. Jefferson Elec. Mfg. Co., 291 U.S. 386, 54 S. Ct. 443 (1934) 4

IV. OTHER DECISIONS

Benton v. Gwinett County Board of Education, 168 Ga. App. 533, 309 S.E.2d 680 (1983) 8

Blackmon v. Alexander, 233 Ga. 832, 213 S.E.2d 842 (1975) 8

Collins v. Waldron, 259 Ga. 582, 385 S.E.2d 74 (1989) 1, 5, 8, 9

Flint River Mills v. Henry, 234 Ga. 385, 216 S.E.2d 895 (1975) 8

George v. Dept. of Natural Resources, 250 Ga. 491, 299 S.E.2d 556 (1983) 8

Georgia Public Service Comm'n v. Southern Bell, 254 Ga. 244, 327 S.E.2d 726 (1985) 8

Guice v. Pope, 229 Ga. 136, 189 S.E.2d 424 (1972) 8

TABLE OF AUTHORITIES – Continued

Page

Henderson v. Carter, 229 Ga. 876, 195 S.E.2d 4 (1972) 1, 5, 8, 9

Heublein, Inc. v. State, 256 Ga. 578, 351 S.E.2d 190 (1987) 9

Reich v. Collins, 262 Ga. 625, 422 S.E.2d 846 (1992) ... 4, 5

Reich v. Collins, 263 Ga. 602, 437 S.E.2d 320 (1993) 5

Rybert & Co. v. City of Atlanta, 258 Ga. 347, 368 S.E.2d 739 (1988) 8

Schieffelin & Co. v. Strickland, 253 Ga. 385, 320 S.E.2d 358 (1984) 8

State v. Private Truck Council of America, Inc., 258 Ga. 531, 371 S.E.2d 378 (1988) 9

Wright v. Forrester, 192 Ga. 864, 16 S.E.2d 873 (1941) 5, 8

The Petitioner respectfully submits the within Reply to the Respondents' Brief ("Resp. Brf."):

I. The Respondents' Supposed *Chevron*/Reliance Defenses Conflict With The Applicable Decisions Of This Court.

The Respondents attempt to resurrect the arguments that failed them in *James B. Bean Distilling Co. v. Georgia*, 501 U.S. ___, 111 S. Ct. 2439 (1991) ("*Beam* (U.S.)"). Based on the same facts at issue here, the Court rejected what had become known as the "*Chevron* factors," *see Chevron Oil C. v. Huson*, 404 U.S. 97 (1971), in determining the applicability of the court's decisions of law in civil actions. *Beam* (U.S.), 501 U.S. at ___, 111 S. Ct. at 2448. By asserting under the label of equitable reliance that all of the old *Chevron* factors now come into full play with respect to remedial questions, the Respondents suggest that *Beam* implicitly overruled the Court's unanimous decision in *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 110 S. Ct. 2238 (1990). Yet, *McKesson* stands as authority for the proposition that a taxpayer's due process rights cannot be undercut by supposed equitable considerations when the State may protect itself by invoking procedural protections: The State's "failure to avail itself of certain . . . methods of self-protection weakens any 'equitable' justification for avoiding its obligation to provide relief." *McKesson*, 110 S. Ct. at 2255.[1] On the same day it issued the *McKesson* decision,

---

[1] This is particularly so where a state successfully defeats interim equitable relief in advance of paying taxes because of the existence of a refund statute, as Georgia itself has done. *Compare Collins v. Waldron*, 259 Ga. 582, 385 S.E.2d 74, 75 n.1 (1989); *Henderson v. Carter*, 229 Ga. 876, 195 S.E.2d 4, 7 (1972); and *Wright v. Forrester*, 192 Ga. 864, 16 S.E.2d 873 (1941), *with*

the Court further held in *American Trucking Associations, Inc. v. Smith,* 496 U.S. 167, 110 S. Ct. 2323, 2334, 2339 (1990) (O'Connor, J., emphasis supplied), that "*McKesson* makes plain that equitable considerations are of limited significance once a constitutional violation is found; . . . Once [as here], a constitutional decision applies and renders a state tax invalid, *due process,* not equitable considerations, will generally dictate the scope of relief offered." *Harper* reaffirmed the principles of *McKesson.*

By revoking the Refund Statute for constitutional claims (*see* discussion, § II, *infra*), Georgia voluntarily relinquished what procedural protection it might otherwise have been able to invoke under the Refund Statute, such as the statute of limitations and even its purported standing defense. Additionally , the pre-*Reich* Refund Statute literally invited the Petitioner to pay the taxes first and seek a refund later, rather than seek somehow to protest the payment or otherwise put the State on notice of the claim of unconstitutionality prior to payment. O.C.G.A. § 48-2-35(a) (refund "shall" be granted whether tax paid "voluntarily or involuntarily").

Moreover, even if this Court were now to change course and engage in a *Chevron*-type analysis with respect to remedial questions, no basis exists here for denying relief. Under *Chevron,* the Court must first decide whether its decision at issue, in this case *Bacchus Imports v. Dias,* 468 U.S. 263, 104 S. Ct. 3049 (1984), established a new principle of law. *Chevron,* 404 U.S. at 106. The clear majority in *Bacchus* held that "one thing is *certain:* The central purpose of the [Twenty-first Amendment] was not to empower States to favor local liquor industries by

---

McKesson, 110 S. Ct. at 2255 and n.29. The State of Georgia has repeatedly defeated attempts to obtain equitable relief based upon the existence of the Refund Statute.

erecting barriers to competition. It is also *beyond doubt* that the Commerce Clause itself furthers strong federal interests in preventing economic Balkanization." *Bacchus, supra,* 104 S. Ct. at 3058 (emphasis supplied). Accordingly, "because the tax violates a *central tenet* of the Commerce Clause but is not supported by any clear concern of the Twenty-first Amendment," *id.* (emphasis supplied), the *Bacchus* Court easily rejected Hawaii's Twenty-first Amendment defense without overruling any binding precedent or embarking on a new direction. *See, e.g., Hostetter v. Idlewild Bon Voyage Liquor Corp.,* 377 U.S. 324, 331-32 (1964) (Twenty-first Amendment no *pro tanto* repeal of the Commerce Clause). For this reason, and based upon the other *Chevron* factors, the Petitioner's right to a remedy in the instant case would be supported by application of the *Chevron* factors, and Respondents' so-called reliance interests are ill-founded.

To buttress their argument, the Respondents harken back to their "double recovery" or "pass-on" argument. Such an argument has already been rejected by this Court: " '[E]quitable considerations' [do not] justify a State's attempt to avoid bestowing this so-called 'windfall' when redressing a tax that is unconstitutional because discriminatory. . . . the pass-on itself furthers the very competitive disadvantage constituting the Commerce Clause violation . . . " *McKesson,* 110 S. Ct. at 2256.

II. The State Court's Standing Defense Does Not Provide An Adequate And Independent State Ground; Petitioner's Purported Lack of Standing Under The Refund Statute Does Not Convert The Refund Statute to A Clear and Certain Remedy So As to Satisfy Due Process.

Respondents, by seeking to limit the Petitioner's cause of action to one under the Refund Statute, *see* Resp.

Brf. at 3, argue that the purported standing defense under the Refund Statute, O.C.G.A. § 48-2-35, constitutes an adequate state ground for the decision below so as to preclude this Court's review. But Petitioner also asserted claims directly under the Due Process Clause and other provisions of the U.S. Constitution. App. O ¶¶ 71-73.[2] The Refund Statute/standing portion of the decision below did not answer the Petitioner's constitutional causes of action,[3] Resp. Brf. 14, and thus was not an adequate independent state law ground to preclude this Court's review. *See Harper v. Virginia Department of Taxation*, 509 U.S. ___, 113 S. Ct. 2510, 2519 (1993) (no "independent and adequate ground that [state's] law of remedies offered no 'retrospective refund remedy' "). Due Process required the Georgia courts to determine whether Georgia offered any "clear and certain" predeprivation or postdeprivation remedy. *Id.* at 2519 and n.10.

---

[2] In a footnote, the Respondent misrepresents that the Petitioner asserted its Federal constitutional claim only after the trial court on remand rejected the Petitioner's claim under the Refund Statute. Resp. Brf. at 8 n.12. In fact, the Petitioner asserted its Federal constitutional claims *after* the Georgia Supreme Court held for the first time in *Reich* (Ga. I) that the Refund Statute did not apply to constitutional claims but *before* the trial court entered summary judgment against the Petitioner under the Refund Statute. *Compare* App. O (12/23/92 Complaint amendment) *with* App. B (2/11/93 summary judgment order) *and* App. L (12/17/92 denial of reconsideration in *Reich* (Ga. I)).

[3] *McKesson* dealt with and rejected in the Commerce Clause context the *United States v. Jefferson Elec. Mfg. Co.*, 291 U.S. 386, 54 S. Ct. 443 (1934) line of "pass-on" cases cited at Resp. Brf. n.21. *McKesson*, 110 S. Ct. at 2256. Respondents' Georgia sales tax cases are likewise inapposite to a Commerce Clause discrimination claim. *See* Petition at 25 n.15.

Regardless of the standing issue, after *Reich*, Georgia offers taxpayers no postdeprivation remedy at all.

Until the Georgia Supreme Court's decisions in *Reich v. Collins*, 262 Ga. 625, 422 S.E.2d 846 (1992) ("*Reich* (Ga. I)"), *vacated and remanded*, 509 U.S. ___, 111 S. Ct. 2439 (1991) ("*Reich* (U.S.)"), *on remand*, 263 Ga. 602, 437 S.E.2d 230 (1993), *cert. granted* ("*Reich* (Ga. II)"), Georgia uniformly recognized that the Refund Statute applied to constitutional claims.[4] The Georgia Supreme Court expressly recognized the Refund Statute's legislative purpose as stated by the Governor to the General Assembly:

> I am attaching a file * * * showing certain taxes that have been paid into the State treasury under *laws that have since been declared unconstitutional.* There is no provision without an act of the legislature, to pay these taxes to these debtors of the State who have paid these unconstitutional taxes. This is a moral obligation of the State. I hereby recommend legislative action to provide for the repayment of these amounts. House Journal 1937, volume 1, pp. 505-567.

Wright v. Forrester, 16 S.E.2d 873, 874 (emphasis supplied). *See also Waldron*, 259 Ga. 582, 385 S.E.2d 74, 75 n.1 (the *Refund Statute* provides an adequate remedy for unconstitutional tax); *Henderson*, 229 Ga. 876, 195 S.E.2d 4, 7 (same). In light of *Reich*, these conflicting decisions of the

---

[4] Respondents' citation to their summary judgment brief *after* remand of the case from this Court, Resp. Brf. at 10 n.16 (citing R. (S93A1217) 329), *supports* the Petitioner's statement that "From 1985 . . . *until this Court's 1991 decision in Beam (U.S. I)*, . . . Respondents . . . agreed that Georgia's Refund Statute" applied. Petition at 4 (emphasis supplied). Respondents now seek to reinterpret the record below and their oral argument to this Court to mean that they always questioned the *applicability* of the Refund Statute to Petitioner's claims. *Id.* 11 & n.17.

Georgia Supreme Court *ipso facto* mean that there is nothing clear or certain about Georgia's retrospective remedy, except that it does not now exist. Indeed, for this reason, the instant case is on all fours with *Reich*, as to which this Court has now granted the petition for writ of certiorari.

III. Respondents Have Mischaracterized The System For Collection Of Alcohol Taxes In Order To Avoid The Due Process Implications Of The Duress That Forced the Petitioner To Pay The Tax And Challenge Its Constitutionality Later.

Of course, the Respondents are now free to say that the Petitioner could simply have shipped its product to its wholesalers without facing any penalty or other adverse consequence because Georgia no longer utilizes the tax stamp system as it did during the years in question here, *see* Resp. Brf. at 6 n.6, and Respondents can now without practical consequence reverse course and tell the Petitioner that it never had any tax stamp obligation at all. But what objectively, reasonably appeared to be the Petitioner's "clear and certain" remedy for redress of its constitutional claims is what now counts, and on this issue, Georgia's statutes and regulations speak for themselves.

So Respondents now rely heavily upon unattributed cites to affidavits of their own employees, for the proposition that registered producers such as the Petitioner had no pre-shipment tax stamp obligation under Georgia law.[5] Respondents must rely upon such testimony because their own regulations consistently supported the opposite proposition. *See* Revenue Rules 560-2-3-.01 and -.03 (App. ZZ-AAA) (defining "registered producer" as a

---

[5] *See* Resp. Brf. at 6, 7, 19, 25 n.26 (cites to R (S93A1217) 110-307).

manufacturer or distiller with plants outside Georgia); 560-2-3-.22 (App. CCC) (only registered producers may ship spirits into the State); 560-2-3-.09 (App. Q) (distilled spirits may not be moved into the State unless stamps have been affixed); 560-2-3-.30 (App. DDD) (registered producers must inspect goods upon their arrival into the State and affix stamps if they are not already affixed). The statute upon which Respondents rely obligated *"[a]ll* manufacturers, distillers, or wholesalers *who* sell, *ship,* or deliver *to each other,"* O.C.G.A. § 3-4-61(a)(3) (App. FF, emphasis supplied), to purchase and affix stamps. Respondents' argument that O.C.G.A. § 3-4-61 placed "dual liability," Resp. Brf. at 20 n.25, upon producers and wholesalers does not mean that *no* liability or duress was placed upon the Petitioner. Petitioner was compelled to pay the taxes in advance if it wanted to continue to do business in Georgia. *See* Petition at 18-23. *See also* O.C.G.A. § 3-2-35 (App. 3); Rev. Rules §§ 560-2-2-.28 (App. XX), 560-2-2-.09 (App. WW); 560-2-2-.29 (App. YY) & 560-2-3-.10 (App. BBB).

IV. The Respondent Had No Clear And Certain Prospective Remedy Under Georgia Law.

None of the administrative remedies relied upon by the Court below or the Respondents here[6] removed what could only be understood as prepayment duress to pay the tax. Moreover, the Petitioner had no clear and certain

---

[6] Respondents add to the Georgia court's list of remedies an alcoholic beverages credit procedure that has nothing to do with claims of constitutionality, O.C.G.A. §§ 3-2-13 and -14 (App. 1 & 2), and the procedure for "Declaratory judgment on the validity of *rules* [not statutes]." O.C.G.A. § 50-13-10 (App. 8, *et seq.*).

predeprivation remedy by way of injunctive or declaratory relief. In the absence of a clear and certain right to interim relief, a declaratory judgment action would not have removed the ongoing duress to continue paying the tax during the course of the litigation. *See* Petition at 27-28.

The Refund Statute remedy, which commenced with an administrative claim, applied to constitutional claims and had been specifically held by the Georgia courts to bar equitable and declaratory relief. *Waldron*, 385 S.E.2d 74, 75 n.1; *Henderson*, 195 S.E.2d 4, 7; *Wright*, 16 S.E.2d 873. *See also Guice v. Pope*, 229 Ga. 136, 189 S.E.2d 424, 426 (1972) (a "court of equity will not take jurisdiction of an action where an administrative remedy is provided by statute"); *Flint River Mills v. Henry*, 234 Ga. 385, 216 S.E.2d 895, 897 (1975) ("where a statute provides a party with a means of review by an administrative agency, such procedure is generally an adequate remedy at law so as to preclude the grant of equitable relief" (citations omitted)); *Georgia Public Service Comm'n v. Southern Bell*, 254 Ga. 244, 327 S.E.2d 726, 728 (1985) ("[w]hen this statutory right of review is available, a complaint in equity is not" (citing *Schieffelin & Co. v. Strickland*, 253 Ga. 385, 320 S.E.2d 358 (1984))); *Rybert & Co. v. City of Atlanta*, 258 Ga. 347, 368 S.E.2d 739, 742 (1988) (denial of declaratory judgment remedy "predicated upon the availability of the administrative appeal"); *Benton v. Gwinett County Board of Education*, 168 Ga. App. 533, 309 S.E.2d 680, 682 (1983) (declaratory judgment not available "where other statutory remedies have been specifically provided" (quoting *Georgia v. Dept. of Natural Resources*, 250 Ga. 491, 493, 299 S.E.2d 556, 557-58 (1983))).

Respondents' cases at most demonstrate an inconsistency in Georgia law, making such a remedy at best not clear and not certain. For instance, *Blackmon v. Alexander*,

233 Ga. 832, 213 S.E.2d 842, 845 (1975), actually stands for the proposition that an available statutory proceeding will defeat equitable relief: "*In the absence of some remedial review prescribed by law,* equity is available." *Id.* (emphasis supplied). Only one case cited by Respondents, *State v. Private Truck Council of America, Inc.*, 258 Ga. 531, 371 S.E.2d 378 (1988), dealt with the availability of injunctive relief and also even mentioned the Refund Statute. But there, the Court simply did not discuss whether the availability of the Refund Statute constituted a statutory remedy so as to preclude the exercise of equitable/declaratory jurisdiction. Perhaps the State did not raise that issue as a defense. But even more importantly, in a *later* case, *Waldron*, 385 S.E.2d 74, 75 n.1 (1989), and consistently with *Henderson*, 195 S.E.2d 4, 7 and *Wright*, 16 S.E.2d 873, other taxpayers (Federal retirees) were denied injunctive escrow relief because "the refund statute (O.C.G.A. § 48-2-35) provides an adequate remedy" – a remedy, by the way, held in *Reich* to be *inapplicable* to *Waldon/Davis*-type claims.

The remainder of Respondents' cases say nothing about the existence of any available statutory remedy, or whether, if such a remedy existed, the litigant was allowed to by-pass the statutory procedure and resort directly to equity or a declaratory judgment action. Absent such direction about the facts of the cases and the arguments and defenses raised by the parties, these cases lack any precedential value on this issue. *See* Resp. Brf. at 21-23. In some of these cases, all relief was denied on the merits. Thus, the courts may have denied relief on the *alternative* ground of the lack of support for the substantive claims. *Id.* The case, *Heublein, Inc. v. State*, 256 Ga. 578, 351 S.E.2d 190 (1987), *appeal dismissed for lack of properly presented federal question*, 483 U.S. 1013 (1987), upon which Respondents place heavy reliance, fails

Respondents for both of these reasons. Once interlocutory relief was denied based upon the availability of the Refund Statute, *see* App. P, the courts *in rejecting the plaintiff's claims on the merits* did not further discuss what, if any, impact, the availability of the Refund Statute had upon the availability of injunctive or declaratory relief. Thus, while some plaintiffs in Georgia may at times have been fortunate enough to avoid the defense of a statutory remedy to defeat equitable/declaratory relief and obtain a ruling on the merits, when the Petitioner had to pay its taxes, such a suit provided no *clear or certain* remedy.

CONCLUSION

The Petitioner respectfully requests that its Petition be granted.

Respectfully submitted,

Counsel of Record:

MORTON SIEGEL
SIEGEL, MOSES, SCHOENSTADT & WEBSTER
One Illinois Center
111 East Wacker Drive,
Suite 2800
Chicago, Illinois 60601-4798
Telephone: 312/540-4300

JOHN L. TAYLOR, JR.
VINCENT, CHOREY, TAYLOR & FEIL
A Professional Corporation
The Lenox Building, Suite 1700
3399 Peachtree Road, N.E.
Atlanta, Georgia 30326
Telephone: 404/841-3200

No. 93-1140

In The

Supreme Court of the United States

October Term, 1993

JAMES B. BEAM DISTILLING CO.,

Petitioner,

v.

STATE OF GEORGIA; JOE FRANK HARRIS, individually; ZELL MILLER, individually and as Governor of the State of Georgia; MARCUS E. COLLINS, individually and as Georgia State Revenue Commissioner; and CLAUDE L. VICKERS, individually and as Director of the Fiscal Division of the Department of Administrative Services,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

APPENDIX TO REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

APPENDICES

WW Georgia Department of Revenue Administrative Rule No. 560-2-2-.09 ..... WW1

XX Georgia Department of Revenue Administrative Rule No. 560-2-2-.28 ..... XX1

YY Georgia Department of Revenue Administrative Rule No. 560-2-2-.29 ..... YY1

ZZ Georgia Department of Revenue Administrative Rule No. 560-2-3-.01 ..... ZZ1

AAA Georgia Department of Revenue Administrative Rule No. 560-2-3-.03 ..... AAA1

BBB Georgia Department of Revenue Administrative Rule No. 560-2-3-.10 ..... BBB1

CCC Georgia Department of Revenue Administrative Rule No. 560-2-3-.22 ..... CCC1

DDD Georgia Department of Revenue Administrative Rule No. 560-2-3-.30 ..... DDD1

APPENDIX WW

Georgia Department of Revenue Administrative Rule No. 560-2-2-.09 Licensing Qualifications. Amended.

(1) Every applicant for a state license, permit, or registration to deal in beverage alcohol products, shall make application on forms furnished by the Commissioner and in connection therewith shall under oath answer all questions, supply all information, and furnish all certificates, affidavits, bonds and other supporting data or documents as required thereby. Applicants for retail dealer licenses to deal in distilled spirits shall further comply with the provisions of Section 560-2-3-.35 of these Regulations.

(2) Applications for a state license, permit, or registration shall be in the same name of the individual, corporation, fraternal organization or partnership as that required by local governing authorities for a local license.

(a) Any fraternal organization shall be permitted to apply for license in the name of any qualified officer or member of such organization. For the purpose of this Regulation, fraternal organization shall refer to any society, order or supreme lodge, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on the lodge system with ritualistic form of work and having a representative form of government.

(b) Any domestic corporation lawfully registered and doing business under the laws of this State, or any foreign corporation lawfully registered under the laws of another state and authorized by the Secretary of State to do business in this State, which seeks to obtain a license

as a retail dealer or retail consumption dealer, may be permitted to apply for such license in the name of the corporation as it is registered in the Office of the Secretary of State. Provided, however:

1. In its application for retail dealer or retail consumption dealer license, said corporation shall provide the Commissioner with the name of its agent authorized to receive service of process under the laws of this State, and also provide the Commissioner with the address of its registered office.

2. In the event that such corporation shall fail to appoint or maintain a registered agent in this State as required by law, or whenever its registered agent cannot with due diligence be found at the registered office of the corporation as designated in its application for retail dealer or retail consumption dealer license, the Commissioner shall be appointed agent to receive any citation for violation of these Regulations.

3. Process may be served upon the Commissioner by leaving with him or any person designated by him, duplicate copies of such citations.

4. In the event that such notice of citation is served upon the Commissioner or one of his designated agents, he shall immediately cause one of the copies thereof to be forwarded to the corporation at its registered office. Any service, so had on the Commissioner, shall be answerable in not more than thirty (30) days.

5. The Commissioner shall keep a record of all citations served upon him under this Regulation, and shall

record therein the time of such service and his action with respect thereto.

(3) The written application for a wholesaler's, retail dealer's, or retail consumption dealer's license shall be a permanent record which the licensee must maintain current as required by Section 560-2-3-.12 of these Regulations. Failure to maintain a current license application as required by Section 560-2-3-.12 shall be grounds for revocation of the same.

(4) The state license issued shall be valid only for the calendar year indicated thereon. A licensee that desires to continue in business during the next or subsequent calendar year must make a new application for such year on or before November 1 of the preceding year. No state license may be transferred from one person to another. The Commissioner may in his discretion grant a transfer of license from one location to another location within the same local regulatory jurisdiction provided authority for such transfer has been granted by the local governing authority. Any untrue, misleading, or omitted statement or information contained in such application shall be cause for the denial thereof and, if any license has been granted, shall be cause for the revocation of same. The failure of any applicant, or failure of any person, firm, corporation or organization having any interest in any operation for which an application has been submitted, to meet any obligations imposed by the tax laws of the State of Georgia shall be grounds for denial of the license, permit or registration for which application is made.

(5) The Commissioner may in his discretion require a Personnel Statement of any employee of any licensed establishment for licensing purposes.

(6) When contrary to the public interest and welfare, no license to sell beverage alcohol of any kind shall be issued by the State Revenue Commissioner to:

(a) any person as determined by the Commissioner, by reason of such person's business experience, financial standing, trade associations, personal associations, records of arrests, or reputation in any community in which he has resided, who is not likely to maintain the operation for which he is seeking a license in conformity with federal, state or local laws;

(b) any person who has been convicted under any federal, state or local law of any felony involving moral turpitude; or

(c) any person who has been convicted under any federal, state or local law of a misdemeanor, particularly, but not limited to, those involving beverage alcohol, gambling, or tax law violations, if such conviction tends to indicate that the applicant will not maintain the operation for which he is seeking a license in conformity with federal, state, or local laws.

(7) If the Commissioner has reason to believe that the applicant is not entitled to the license for which he has applied, he shall notify the applicant thereof, and upon request by the applicant, afford him due notice and opportunity for hearing on the application. If the Commissioner, after affording such notice an opportunity for hearing, finds the applicant is not entitled to a license

hereunder, the applicant shall be advised in writing of the findings upon which such denial is based.

(8) The Commissioner may decline to issue a state license to a person for the operation of a place of business when any person having any interest in the operation of such place of business or control over such place of business does not meet the same character requirements as herein set forth for the licensee.

(9) In the event any license application is finally denied, no subsequent application by the same person for a license to sell beverage alcohol shall be considered until the expiration of two years from the date of the final order of denial.

(10) Required statements or information disclosed on forms furnished by the Commissioner which the Commissioner is unable to verify or from which the Commissioner is not able to adequately conduct a full investigation of an applicant or a place of business due to foreign background, ties or interest or for any reason beyond the Commissioner's control, shall be, in addition to all other grounds, cause for denial of any license, and if any license has been granted, shall be cause for revocation of same. Willful failure to furnish the Department with any of the information required by these Regulations or by law, or as the Commissioner or his agents may from time to time require, shall constitute grounds for denial of a license.

APPENDIX XX

Georgia Department of Revenue Administrative Rule No. 560-2-2-.28 Violations; Unlawful Activities.

(1) Any person holding any license, permit, or registration issued pursuant to the Act or any employee or agent of such person who violates any provision of the Act or Regulations, or directs, consents to, permits, or acquiesces in such violation, either directly or indirectly shall, by such conduct, subject the license to suspension or revocation. For purposes of administering and enforcing the Act and these Regulations, any act committed by an employee, agent or representative of a licensee shall be deemed to be an act of such licensee.

(2) It shall be a violation of the Act and these Regulations for any licensee, permittee or registrant to permit any person to engage in any activity on the premises for which the license is issued or within the place of business, which is in violation of the laws or regulations of any federal, state, county or municipal governing authority or regulatory agency. With respect to any such activity, it shall be rebuttably presumed that the same was done with the knowledge or consent of the licensee; provided however, that such presumption may be rebutted only by evidence which precludes every other reasonable hypothesis save that such licensee did not know, assist or aid in such occurrence, or in the exercise of full diligence could not have discovered or prevented such activity.

APPENDIX YY

Georgia Department of Revenue Administrative Rule No. 560-2-2-.29 Failure to Comply with Tax Laws.

(1) No application for a license to sell beverage alcohol will be considered so long as such applicant, person, form or corporation holding an interest in the business for which application is made, has failed to meet any obligations imposed by any tax law of the State of Georgia.

(2) The failure of any licensee, permittee or registrant, or person, firm, or corporation holding an interest in the business for which the license is issued to meet any obligations imposed by any tax law of the State of Georgia shall be grounds for suspension or revocation of such license, permit, or registration.

APPENDIX ZZ

Georgia Department of Revenue Administrative Rule No. 560-2-3-.01 Producer. Amended. "Producer" shall mean a manufacturer, distiller, processor, rectifier, or bottler of distilled spirits. It shall also mean an importer engaged in importing into the United States, if the Commissioner is satisfied that he can, through such importer, effectively regulate the quality and purity of distilled spirits to be sold within the State of Georgia.

APPENDIX AAA

Georgia Department of Revenue Administrative Rule No. 560-2-3-.03 Registered Producer. Amended. "Registered producer" shall mean a producer who has no distillery, factory or plant in Georgia but is registered with the Commissioner pursuant to Section 560-2-3-.22 of these Regulations.

APPENDIX BBB

Georgia Department of Revenue Administrative Rule No. 560-2-3-.10 Bottles, Cans or Containers without Tax Stamps. Amended. Every bottle, can or container containing or having recently contained any distilled spirits which does not have affixed thereto a stamp showing full payment of the tax on the contents thereof shall be prima facie illegal and contraband unless and until it can be conclusively shown that the same when discovered was being transported by a licensed common carrier from a point outside Georgia in the normal course of a producer's business.

APPENDIX CCC

Georgia Department of Revenue Administrative Rule No. 560-2-3-.22 Registration of Producers, Sellers, Joint Registrants and Brands; Registration Fees; Additional Brand Registrations. No person shall be a registered producer unless and until he shall have made application therefor to the Commissioner, secured from the Commissioner approval thereof and all his brands of distilled spirits to be shipped into Georgia, and met the requirements for a license and bond as provided in Section 560-2-3-.23 of these Regulations. Any person who is not a producer but wishes to purchase distilled spirits from a producer for resale to licensed Georgia wholesalers may apply for registration and licensing jointly with such producer as a "joint registrant." Each application for registration shall be accompanied by a registration fee in the sum of one hundred dollars ($100) annually, which shall include the permit fees for one resident representative of the producer, one resident representative of a joint registrant, and the registration fees for not over ten brands. Any brand registration shall be on such conditions as the Commissioner may impose. No producer shall present for registration at any one time more than ten brands of distilled spirits. The registration fee for each additional brand of distilled spirits registered by a producer in excess of ten registered by him shall be ten dollars ($10) annually.

APPENDIX DDD

Georgia Department of Revenue Administrative Rule No. 560-2-3-.30 Arrival; Tax Stamp Inspection. Shipments of distilled spirits and alcohol shall be received at the designated warehouse as the property of the registered producer originating the shipment. Upon arrival, the resident representative of the producer shall inspect such shipment and immediately notify the Commissioner if tax stamps have not been properly affixed to all containers.